

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ADELPHIA GATEWAY, LLC,	:	CIVIL ACTION NO. 1:21-CV-1241
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
PENNSYLVANIA	:	
ENVIRONMENTAL	:	
HEARING BOARD, et al.,	:	ELECTRONICALLY FILED
	:	
Defendants	:	

ANSWER IN INTERVENTION

The Commonwealth of Pennsylvania, Department of Environmental Protection (“the Department”), by and through the undersigned counsel, files this Answer in Intervention in support of its Motion for Leave to Intervene. The Department answers as follows:

1. The Department is the agency that exercises Pennsylvania authority to issue or deny state air quality plan approvals to applicants for plan approvals or permits under Section 6.1 of the Pennsylvania Air Pollution Control Act, 33 U.S.C. § 1341, (“Air Pollution Control Act” or “APCA”), and is the state agency delegated the authority to administer the Air Quality Permitting program under Subchapter V of the Clean Air Act, 42 U.S.C. § 7661.

2. The Department is the state agency with the duty and the authority to administer and enforce, the Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959), as amended, 35 P.S. §§ 4001 et seq. (“Air Pollution Control Act”), Section 1917-A of the Administrative Code 1929, The Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 (“Administrative Code”), and the regulations promulgated thereunder, including 25 Pa. Code Chapter 127 (relating to air quality permitting).

3. Plaintiff-Intervenor the Department admits the allegations in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 17, 18, 21, 23, 24, 25, 27, 28, 34, 36, 37, 38, 43, 44, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 63, 64, 65, 66, 67, 68, 69, 70, 74, 77, 79, 82, 85, 86, 88, 90, 93, 95, 96, 98, 103, 105, and 107.

5. Plaintiff-Intervenor the Department neither admits nor denies the allegations in Paragraphs 11, 15, 16, 19, 20, 22, 71, 72, 73, 75, 78, 80, 81, 83, 84, 87, 91, 92, 94, 97, 99, 100, 101, 102, 104, 106, 109, 110, 114, 116, and 117 as they are conclusions of law and do not require a response.

6. Plaintiff-Intervenor the Department lacks the knowledge or information sufficient to form a belief about the truth of the allegations in Paragraphs 26, 29, 30, 31, 32, 33, 35, 39, 40, 41, 42, 45, 46, 47, 58, 59, 60, 61, 62, 76, 89, 108, 111, 112, 113, and 115.

7. Plaintiff-Intervenor the Department admits the allegations in Paragraph 9 concerning the appeals to the Environmental Hearing Board (“EHB”) but lacks the knowledge or information to form a belief as to the proceeding in the United States Court of Appeals for the D.C. Circuit.

8. The Department is the exclusive state agency with the authority to issue air quality plan approvals.

9. Pursuant to Section 19(d)(1) of the federal Natural Gas Act, as amended in 2005, 15 U.S.C. § 717r(d)(1), any civil action challenging the Department’s air quality plan approval must be filed in federal Court. This section provides:

The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as “permit”) required under Federal law, other than the Coastal Zone Management Act of 1972.

15 U.S.C. § 717r(d)(1).

10. The United States Court of Appeals for the Third Circuit, as well as many other Circuit Courts, have held repeatedly that it has original and exclusive jurisdiction over all civil actions challenging Department-issued permits for FERC-regulated pipelines.

11. The EHB was correct in deciding it did not have jurisdiction to hear the appeals of the plan approval the Department issued to Adelphia.

WHEREFORE, Plaintiff-Intervenor the Department requests that this Honorable Court grant the relief requested by the Plaintiff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Vera N. Kanova, counsel for the Commonwealth of Pennsylvania, Department of Environmental Protection, hereby certify that on July 22, 2021, I caused to be served a true and correct copy of the foregoing document to the following individuals:

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